

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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)  
IN THE MATTER OF ACCESS TO )  
REAL PROPERTY IN DELAWARE COUNTY, )  
NEW YORK, OWNED BY: )  
)  
NICHOLAS DIMATOS, ) ADMINISTRATIVE ORDER  
) DIRECTING COMPLIANCE  
Respondent. ) WITH REQUEST FOR ACCESS  
)  
) Index Number  
) CERCLA-02-2003-2003  
Proceeding under Section 104(e) )  
of the Comprehensive )  
Environmental Response, )  
Compensation, and Liability Act )  
of 1980, as amended, )  
42 U.S.C. Section 9604(e). )  
-----X

JURISDICTION

1. This Administrative Order ("Order") is issued to Nicholas Dimatos (hereinafter, "Respondent"), pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9604(e)(5), which authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") on January 23, 1987, by Executive Order No. 12580, redelegated to the Regional Administrators of EPA on April 17, 1987, and within EPA Region 2, further redelegated to the Director of the Emergency and Remedial Response Division on October 29, 1998.

PARTIES BOUND

2. This Order shall apply to and be binding upon Respondent and his successors, heirs and assigns, and each and every agent of Respondent and upon all other persons and entities who are, under the direct or indirect control of Respondent, including any and all lessees of Respondent.



FINDINGS OF FACT AND CONCLUSIONS OF LAW

3. The Richardson Hill Road Landfill Superfund Site (the "Site") is located on Richardson Hill Road in the Towns of Sidney and Masonville, Delaware County, New York and is depicted generally on the map attached as Appendix A.
4. The Site includes a 8-acre inactive landfill (the "Landfill") which includes a waste oil pit. The remainder of the Site includes the so-called North and South areas to which hazardous substances released at or from the Landfill have migrated. The Landfill drains into a nearby marsh and South Pond via a drainage ditch. South Pond drains through a series of three beaver dams, then into Herrick Hollow Creek and eventually into the west branch of the Delaware River and the Cannonsville Reservoir. The Reservoir is part of the New York City watershed.
5. A "release," as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances has occurred at the Site, in that, among other things, hazardous substances have leached, and have been discharged, dumped, leaked, spilled and/or been disposed of, into the environment at or from the Site. There is a threat of further such releases at or from the Site.
6. Respondent Nicholas Dimatos is the owner of a 76.5-acre parcel located at Richardson Hill Road (a.k.a. Herrick Hollow Road), Masonville, New York (the "Dimatos Property"). This parcel is shown on the Town of Masonville, Delaware County tax map #186-2-33, Deed Book #795, Page #117.
7. Sediments contaminated by polychlorinated biphenyls ("PCBs") are present in the portion of Herrick Hollow Creek which passes through the Dimatos Property. Thus, there has been a "release" of hazardous substances, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), to and at the Dimatos Property. In addition, the Dimatos Property is, for purposes of Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), a place where entry by and on behalf of EPA is necessary to effectuate a response action under CERCLA, and/or to determine the need for further response actions under CERCLA.
8. The Landfill was active from 1964 to 1969. Wastes disposed of at the Landfill included municipal solid wastes,

commercial wastes and industrial wastes, including but not limited to waste oils which contained hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including PCBs and trichloroethylene ("TCE").

9. A 1982 Site Inspection Report revealed the presence of, among other things, PCBs, TCE and vinyl chloride in the waste oil pit, TCE and PCBs in the water and sediments of two beaver ponds comprising the South Pond, downgradient from the Landfill, and TCE in residential wells near the Site. On July 1, 1987, the Site was added to the National Priorities List established under Section 105(a) of CERCLA, 42 U.S. C. § 9605(a).
10. Following a remedial investigation and feasibility study, EPA issued a Proposed Plan describing the remedial alternatives considered for the Site and identifying the preferred remedy for the Site on July 28, 1997.
11. EPA's September 30, 1997 Record of Decision ("ROD") sets forth EPA's selected remedy for the Site, which includes, in summary, excavation of contaminated waste material and soil in the North and South Areas (other than the Landfill); excavation and/or dredging of PCB-contaminated sediments from South Pond and areas downstream; wetlands restoration; disposition of excavated/dredged waste materials, as appropriate, by off-Site disposal, consolidation in the existing Landfill at the Site, or placement of the materials in a TSCA landfill to be constructed on-Site; capping of the existing landfill; extraction and treatment of contaminated groundwater; institutional controls; and continued maintenance of residential water treatment systems.
12. On June 4, 1999, the Northern District of New York entered a judicial Consent Decree (hereinafter, the "Consent Decree") between the United States and, among others, AlliedSignal, Inc. (now Honeywell International, Inc.) and Amphenol Corp. (hereinafter together, the "Companies") which requires the Companies to, among other things, design and carry out the selected remedy for the Site. Pursuant to the Consent Decree, the Companies have completed the majority of the Remedial Design ("RD") work, and field work to implement the Remedial Action ("RA") relating to excavation and dredging is scheduled to begin in early 2003.
13. As required by Paragraph 27 of the Consent Decree, the Companies have obtained written agreements for access with owners of property where access is needed to implement the

Consent Decree. On or about October 8, 1999, the Companies entered into a contractual access agreement (the "Agreement") with Respondent. In consideration for, among other things, the performance of remedial work on the Dimatos Property, the Agreement provides the Companies, EPA and New York State with access to the Dimatos Property. Although the Agreement requires the Companies to use their best efforts to give at least 24-hour advance notice prior to the date on which any access is required, their right of access under the Agreement is otherwise unconditional, with no provision for revocation.

14. In order to excavate contaminated sediments from Herrick Hollow Creek, as required by the ROD, and in particular, those contaminated sediments in the portion of the Herrick Hollow Creek which is located on the Dimatos Property, it is necessary to construct an access road on the Dimatos Property, divert the creek, and conduct the excavation. These tasks are scheduled to be performed by the Companies and their contractors in 2003. Thereafter, pursuant to the Consent Decree and the ROD, additional activities on the Dimatos Property by the Companies and their contractors will include wetlands restoration, maintenance of such restoration, post-construction monitoring of surface water and sediment, and access road removal and restoration of the impacted access road area. EPA currently expects that the aforementioned tasks, other than the maintenance and monitoring, will be completed by the fall of 2004 and that there will subsequently need to be at least 5 years of periodic maintenance and monitoring of surface water and sediment on the Dimatos Property. Additional periodic monitoring may be necessary thereafter, based on results from the first 5 year monitoring period.
15. Section 121(d) of CERCLA, 42 U.S.C. §9621(d), provides that remedial actions selected under CERCLA generally must comply with the "applicable or relevant and appropriate requirements" of other environmental laws. Consistent with Section 121(d) and pursuant to the ROD, compliance with the National Historic Preservation Act, 16 U.S.C. 470, is required at the Site. As a result, based on a prior cultural resource survey, a "Phase 1" reconnaissance survey of the Site was conducted in 2001 to identify potential archaeological sites. This survey identified five sites, Herrick Hollow II, IV, VI, VII and a portion of V, as depicted on the map attached hereto as Appendix B, on the Dimatos Property. These sites require additional field survey work ("Phase 2" and "Phase 3" archaeological work) to

determine the eligibility of those sites for placement on the National Register of Historic Places. In order to ensure that all dredging and excavation work required by the ROD is completed in one construction season so that the threat posed by the PCB contamination in the creek sediments can be abated as soon as possible and the Landfill may be timely capped, the Phase 2 archaeological field work must be completed before the onset of ground-freeze in 2002. Phase 3 archaeological field work is expected to be conducted in 2003 and approved prior to the commencement of road construction, stream diversion and excavation activities on the Dimatos Property. The archaeological work is being conducted by the Public Archaeological Facility ("PAF") at Binghamton University under contract to the Companies.

16. In accordance with the Agreement, advanced written notice was provided by PAF to Mr. Dimatos on or about September 10, 2002 at both his primary residence in Binghamton, New York and at the Dimatos Property. PAF mobilized to the Dimatos Property and began work on or about September 16, 2002. On or about September 20, 2002, Spyros Dimatos, Respondent's son, contacted PAF and denied access to the Dimatos Property for the period from two weeks before the opening of deer hunting season until its end, i.e., from approximately October 1, 2002 through December 15, 2002.
17. On September 23, 2002, Young Chang, EPA's Remedial Project Manager for the Site, contacted Spyros Dimatos to explain the urgent need for the archeological work to be completed. Based on their discussions, EPA believed an understanding was reached by which hunting could continue in its normal location on the largest portion of the 76.5-acre Dimatos Property (the east side of Herrick Hollow Creek) while archeological work was conducted during normal business hours by workers in high visibility attire on the smaller portion of the Dimatos Property (west of Herrick Hollow Creek and adjacent to Richardson Hill Road). EPA's understanding was documented by letter dated September 24, 2002.
18. On or about September 30, 2002, Spyros Dimatos called PAF and stated that he wanted PAF off the Dimatos Property that day. In response, PAF was instructed to leave the Dimatos Property by the Companies that same day.
19. On October 1, 2002, counsel for the Companies contacted Respondent to confirm the understanding set forth in EPA's September 24, 2002 letter. At that time, Respondent

indicated that he would have any workers on the Dimatos Property between October 1 and December 15, 2002 arrested. When counsel for the Companies suggested generally that the parties consider arrangements by which the matter might be resolved amicably, Respondent stated that the only acceptable arrangement would be the Companies' purchase of the entire Dimatos Property. As a result of the continued lack of resolution, PAF conducted archaeological surveys at a neighboring property where access was not in dispute. All such work has been completed. At a minimum, thirty additional days of field work prior to ground freezing are required in order to complete the archaeological surveys at the Dimatos Property.

20. By letter dated October 3, 2002, counsel for the Companies contacted the Delaware County Sheriff's Office to prevent Respondent from filing an invalid report concerning the authorized presence of workers, and to obtain paid security for workers at the Site. By letter to the Sheriff's Office dated October 8, 2002, counsel for Respondent alleged that his client had not been given advance notice, that he had come across workers while hunting on the first day of the season, and that the Agreement contained serious legal deficiencies. While documentation contradicts Respondent's factual assertions, based on the apparent conflict, the Sheriff's Office initially reserved decision as to whether it would intervene, and referred the matter to the Delaware County Attorney.
21. By phone call and letter dated October 11, 2002, EPA provided information and documents to counsel for Respondent regarding, among other things, EPA's authority to require access so that the remedial work could proceed. EPA's letter, attached hereto as Appendix C, outlined a proposed compromise under which Respondent would be permitted to continue hunting through October 20, 2002; that archaeology work re-start on Monday, October 21 with work limited to the hours of 8:30 a.m. to 3:30 p.m. on weekdays, to permit hunting in the early mornings, evenings and weekends; and that best efforts would be made to complete this year's field work as soon as possible in order to allow for full-time use by the Respondent of the Dimatos Property during the balance of the hunting season. EPA's letter required that a response be provided by October 17, 2002. On October 17, 2002, counsel for Respondent requested and was granted an extension until October 21, 2002.
22. On October 21, 2002, counsel for Respondent indicated that

his client would permit work to continue if the Companies could guarantee that work would be completed by November 15, 2002 and if, possible, that a comparable substitute interim hunting location be provided. Because work by PAF had been stopped since on or about October 1, 2002 due to Respondent's objections, the remaining work cannot be completed within the deadline set by Respondent. Regarding the provision of an alternate hunting location, a 200-acre neighboring property owned by the Companies was considered. However, due to potential liability for the Companies for which Respondent could not provide adequate indemnity, this option was not considered viable. EPA and the Companies then again proposed that hunting take place on the Dimatos Property on weekends, as well as on weekdays during and prior to work hours, and during the 9-day period from November 23, 2002 through December 1, 2002. This offer was rejected by Respondent. Respondent then indicated that he would not permit access without a legal action. Counsel for Respondent agreed to accept authorized service of legal papers.

23. Because Respondent has declined to enter into any resolution which would permit the timely performance of the needed archaeological work, has stated that he would not permit access without a legal action, and has previously threatened to arrest anyone on the Dimatos Property, EPA believes that any hunting on the Dimatos Property while EPA and its officers, employees, and designated representatives, including but not limited to the Companies and their contractors and subcontractors, are present would present an unacceptable safety, security and liability risk.
24. As of the date of this Order, consent to access to the Dimatos Property needed to conduct the RD/RA has not been granted by Respondent. EPA has designated the Companies and their contractors and subcontractors as EPA's authorized representatives for purposes of entry onto the Dimatos Property for performance of the RD/RA, including but not limited to those activities referred to in Paragraphs 14 and 15 above.

#### DETERMINATION

25. Based on the FINDINGS and CONCLUSIONS set forth above and the entire Administrative Record, EPA has determined that there is a reasonable basis to believe that (1) there may be or has been a release or threat of release of a hazardous substance or pollutant or contaminant at the Site and at the

Dimatos Property, within the meaning of Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), (2) access to the Dimatos Property is needed by EPA and its designated representatives to take a response action under CERCLA and determine the need for further response actions under CERCLA, (3) EPA and its designated representatives are authorized to enter the Dimatos Property pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and (4) EPA's requests for consent to such access have not been granted.

#### ORDER

26. Respondent and any and all employees, agents, and all other persons under the direct or indirect control of Respondent, including lessees, shall afford EPA and its officers, employees, and designated representatives, including but not limited to the Companies and their contractors and subcontractors, full and unrestricted access to the Dimatos Property for the purpose of conducting the RD/RA, including but not limited to all those activities referred to in paragraphs 14 and 15 above. Respondent shall provide such access for such period of time as is reasonably necessary for EPA and the Companies to complete the RD/RA work at the Dimatos Property, including but not limited to any monitoring and maintenance activities that are needed. Respondent shall not interfere in any way with the performance of EPA's or the Companies' activities at the Dimatos Property, and any such interference shall be deemed a violation of this Order. Respondent shall not conduct or permit any hunting on the Dimatos Property during weekday daylight hours when EPA and its officers, employees, and designated representatives, including but not limited to the Companies and their contractors and subcontractors, are present.

#### GENERAL PROVISIONS

27. Nothing herein limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, or permits. In the event of any conveyance by the Respondent or his agents, successors or assigns, of an interest in any property within the Site, Respondent and his agents, successors, heirs or assigns shall not convey the interest in any manner which would have the effect of hindering or otherwise limiting continued access by EPA and/or its representatives for the purpose of carrying out the RD/RA. Respondent shall notify EPA in writing at least thirty (30) calendar days prior to the conveyance of any



interest in property at the Site, and shall, prior to the transfer, notify the other parties involved in the conveyance of the provisions of this Order.

28. This Order and all of its terms and provisions shall remain in effect until the Director of the Emergency and Remedial Response Division, EPA Region 2, or his designee, notifies Respondent in writing that the RD/RA that is needed at the Dimatos Property has been completed.
29. Nothing herein shall constitute or be construed as a satisfaction or release from liability with respect to any conditions or claims arising as a result of past, current or future operations, ownership or use of the Site by Respondent, his agents, contractors, successors or assigns.
30. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondent or any other entity which is not a party to this Order.
31. Nothing in this Order shall affect in any manner the right of EPA to issue any other orders to Respondent or to any other parties under CERCLA which relate to this Site or any other site.
32. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

#### ACCESS TO ADMINISTRATIVE RECORD

33. The Administrative Record supporting the above Findings of Fact, Conclusions of Law, and Determination is available for review on weekdays between the hours of 9:00 a.m. and 5:00 p.m. at the United States Environmental Protection Agency, Region II, 290 Broadway, 18th Floor, New York, New York 10007-1866. Respondent should contact Brian E. Carr, Esq. of EPA's Office of Regional Counsel at (212) 637-3170, if he wishes to schedule an appointment to review the Administrative Record.

#### OPPORTUNITY TO CONFER AND EFFECTIVE DATE OF ORDER

34. Within two (2) business days after receipt of this Order by Respondent or his designated representative, Respondent may request a teleconference or meeting with EPA to discuss this

Order. Any such conference shall be held within two (2) business days of Respondent's request. At any such conference, Respondent may appear by an attorney or other representative(s). Respondent should contact Brian Carr of EPA at (212) 637-3170 to arrange such a teleconference or meeting should he desire one.

35. This Order shall become effective three (3) business days after receipt of this Order by Respondent or his designated representative unless a conference is timely requested as provided above. If a conference is timely requested, then at the conclusion of the conference or after the conference, if EPA determines that no modification to the Order is necessary, this Order shall become effective immediately upon notification by EPA of such determination. If modification of the Order is determined by EPA to be necessary, the Order shall become effective upon notification by EPA of such modification. The EPA notifications under this paragraph may, at EPA's discretion, be sent by facsimile, by electronic mail, or by oral communication, provided that if EPA does use such an expedited form of notification, it will also confirm, or send a copy of, such notification by first class, certified or express mail to Respondent or his legal counsel. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.

#### NOTICE OF INTENTION TO COMPLY

36. Within two business days of the effective date of this Order, Respondent shall provide written notice to EPA clearly stating whether he intends to comply with the terms hereof. Such notice shall be sent to Brian Carr, Assistant Regional Counsel, Office of Regional Counsel, United States Environmental Protection Agency Region II, 290 Broadway, 17th Floor, New York, NY 10007-1866. Such notice may be submitted by facsimile at (212)637-3104 provided that the original of the notice is also mailed to EPA. In the event that Respondent fails in a timely manner to provide such notice, or if Respondent's notice does not state that he intends to comply with this Order, Respondent shall be deemed not to have complied with the terms of this Order.


#### PENALTIES FOR NONCOMPLIANCE

37. Any unreasonable failure of Respondent to comply with this Order or any part thereof may give rise to an enforcement action(s) pursuant to Section 104(e) (5) of CERCLA, 42 U.S.C.

§ 9604(e)(5), which may subject Respondent to civil penalties of up to \$27,500 per day, subject to possible further adjustments of this penalty maximum consistent with the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996), and the regulations promulgated thereunder, including the Civil Monetary Penalty Inflation Adjustment Rule, 40 CFR Part 19.

38. Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purposes, including the prevention or abatement of an imminent and substantial danger to the public health, welfare, or the environment arising from conditions at the Site, and recovery of costs thereof.

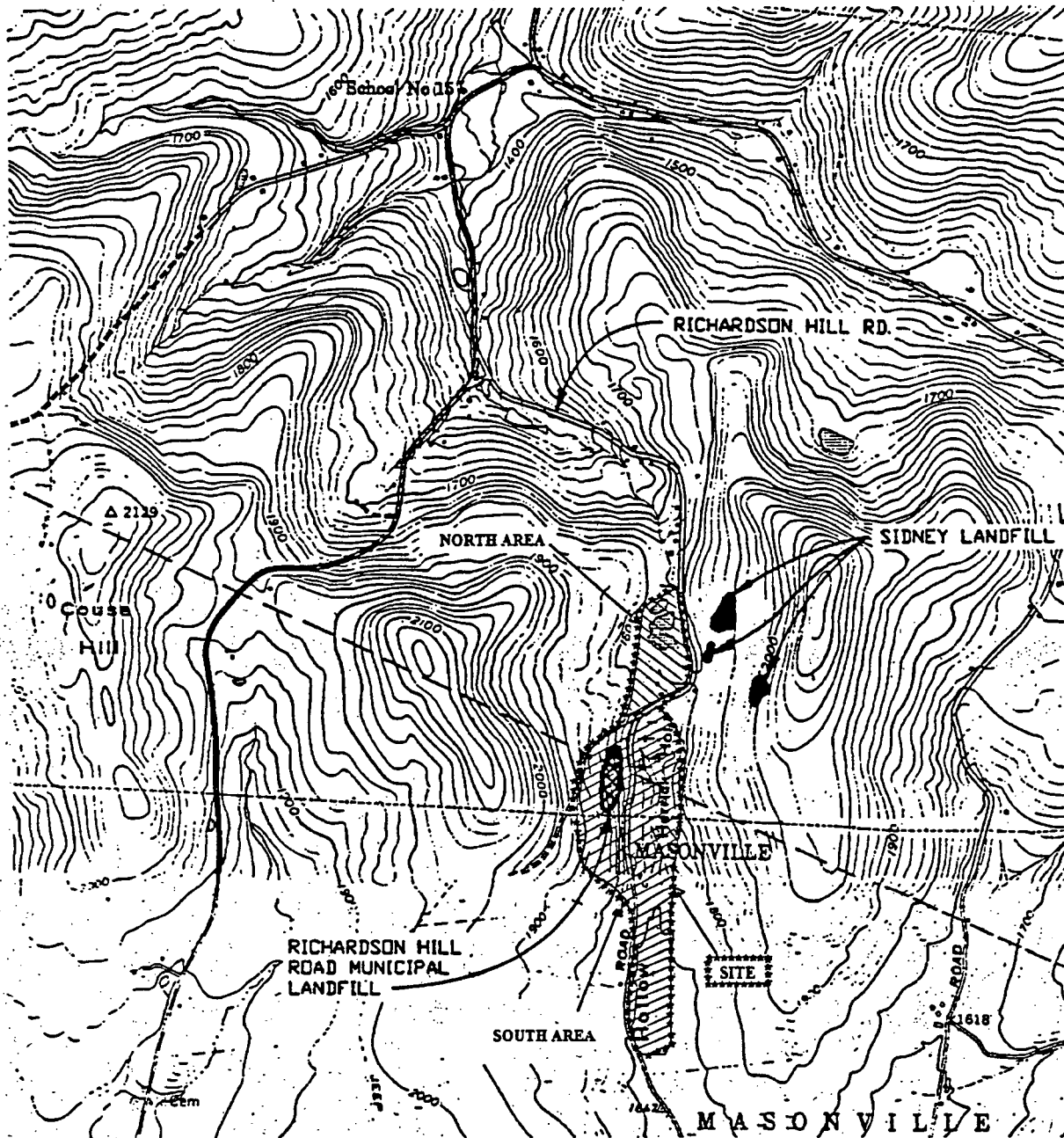
U.S. ENVIRONMENTAL PROTECTION AGENCY

  
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George Pavlou, Director  
Emergency and Remedial Response  
Division

10/30/02  
Date of Issuance

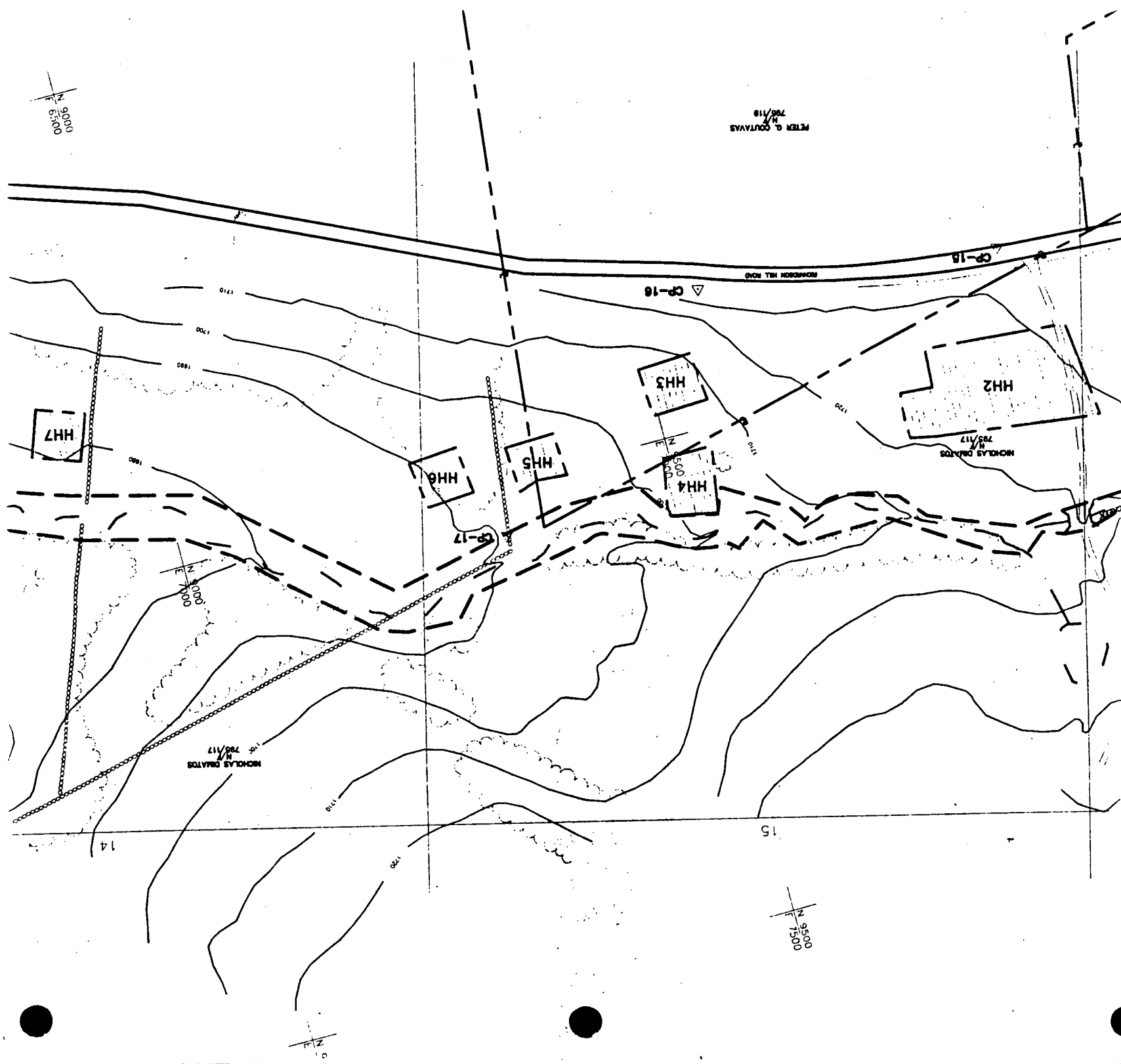
**Appendix A - Site Map**

FIGURE 2 RICHARDSON HILL ROAD MUNICIPAL LANDFILL SITE  
Site Location Map



Adapted from U.S.G.S. Trout Creek N.Y., Walton West N.Y., Unadilla N.Y., and Franklin N.Y., 7.5 Min. Quadrangles

**Appendix B - Dimatos Property Archaeological Sites**



Appendix C - EPA Letter of October 11, 2002





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

October 11, 2002

VIA FEDERAL EXPRESS

Peter A. Daniels, Esq.  
201 Press Building  
19 Chenango Street  
Binghamton, NY 13901  
(607) 723-7435

Re: Richardson Hill Road Landfill Site, Sidney, New York

Dear Mr. Daniels:

Thank you for your return call to me today regarding the issue of continued access to the property of your client, Mr. Nicolas Damatos.

As we discussed, the United States Environmental Protection Agency ("EPA") has selected a remedy to address the release of hazardous substances from the Richardson Hill Road Landfill Site (the "Site"), under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9601 et seq., commonly known as the "Superfund" law. The Record of Decision for the Site is filed locally at the Sidney Public Library. For your convenience, I am providing you with a copy, which is appendix A to the enclosed federal judicial consent decree which requires Mr. Goldberg's clients, Honeywell International, Inc. and Amphenol Corp., to perform the cleanup. This cleanup, at an estimated cost in excess of \$13 million, includes the capping of the landfill and the removal of PCBs from various areas, including the stream running through your client's property. In order to carry out this work, other preliminary activities need to be completed, including the archeological assessment of your client's property.

As I indicated, it is vital that your client be aware that this archeological work must be completed this fall in order to obtain the necessary approvals from New York State's Historic Preservation office so that major construction work can begin on

time in March 2003. Multi-million dollar contracts, the result of several years of planning, would be affected by a delay attributable to your client's actions, in addition to the timely remediation of a source of contamination to the New York City water supply system.

Under Section 104(e) of the Superfund law, a copy of which is enclosed in pertinent part, EPA has the legal right to come onto any property to investigate or perform a cleanup. In carrying out such work, it is EPA's goal to maintain positive, productive relations with the community and parties affected by Superfund cleanups. Therefore, we prefer to reach consensual agreements with property owners. In the event that parties refuse, EPA may issue an administrative order requiring access, the violation of which carries penalties of up to \$27,500 per day.<sup>1</sup> EPA may also obtain a federal warrant. A copy of EPA's access policy is enclosed describing these options. Due to the time critical nature of this work, please be advised that EPA is prepared to undertake these steps, including referral to the Department of Justice, unless a resolution is reached by October 17, 2002. Based on our discussion today, I am confident that such a compromise is possible.

We recognize that the Damatos have a strong interest in being able to use the property for hunting, as they have traditionally done. For this reason, EPA and Mr. Goldberg's clients have for some weeks sought to reach some accommodation to address your client's desire.<sup>2</sup> However, as with most compromises, it is necessary for your client to accept something less than all. These options could include permitting hunting on weekends and during non-work hours, postponing work for the first week of the hunting season, arranging for hunting at an alternate location, etc.

At this time, archeological work has been halted on Mr. Damatos'

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<sup>1</sup>Section 104(e) (5) (B) indicates penalties of up to \$25,000 per day. This figure was amended by regulation effective January 30, 1997 to reflect inflation.

<sup>2</sup>You indicated that it was your understanding that your client was not given adequate notice that work was to be done. It is my understanding that the archeology group, headed by a SUNY Binghamton professor, sent a letter to Mr. Damatos in Sidney and Binghamton dated September 10. Thereafter, they were contacted by Spyros Damatos, following which EPA's engineer, Young Chang, spoke with him. A copy of her September 24th letter is enclosed.

property for the last week. All other archeology sites have been completed in the meanwhile. It is my understanding that your client recently requested that work be halted prior to the start of hunting season on October 15<sup>th</sup>. This request has essentially been met. Therefore, I would propose as a compromise that:

- your client be permitted to hunt during the first week of the season, namely October 15<sup>th</sup>-20<sup>th</sup>;
- that archeology work re-start on Monday October 21<sup>st</sup>;
- that this work be limited to 8:30 a.m. to 3:30 p.m. weekdays to permit your client to hunt in the morning or evening and on weekends; and
- that best efforts will be made to complete the work as soon as possible in order for your client to make full-time use of the property during the balance of the hunting season, if any.

A compromise along these or similar lines would need to be confirmed through discussions among you and Mr. Goldberg. However, I believe that such a result would be greatly preferable to the expensive legal alternatives.<sup>3</sup> As we also discussed, it is my understanding that construction work in the vicinity of your client's property may also extend into the 2003 hunting season. Thereafter, it would not be expected that your client would be disturbed in such a significant manner.

If you have any questions, please contact me at (212) 637-3170. I appreciate your efforts to find a mutually acceptable resolution to this issue.

Sincerely yours,

Brian E. Carr  
Assistant Regional Counsel

Enclosures

cc: Alan Goldberg, Esq. (via FEDEX and fax without enclosures)

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<sup>3</sup>In addition to EPA's enforcement options, Mr. Goldberg's clients presumably could bring an action to enforce their contractual access agreement and seek damages for the delays. In my view, the concerns raised in your October 8, 2002 letter to Sheriff Thomas Mills regarding the completeness and execution of the document are inadequate contractual defenses to justify non-performance, particularly in view of the efforts to resolve this matter.

Whiteman Osterman & Hanna  
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Albany, New York 12260  
(518) 487-7780  
(518) 487-7777 (fax)

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